



**Office of the Attorney General
State of Texas**

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ATTORNEY GENERAL

November 27, 1991

Ms. Cathy L. Meyer
Assistant City Attorney
City of Irving
P. O. Box 152288
Irving, Texas 75060

Open Records Decision No. 598

Re: Application of exceptions to the
Open Records Act to request for release
of Emergency Medical Services records
within article 4495b, section 5.08,
V.T.C.S. (RQ-44)

Dear Ms. Meyer:

We have received your request for a decision under the Open Records Act as to whether the city may withhold certain documents requested by a member of the public. You inform us that the City of Irving received a written notice of claim pursuant to section 4.01 of article 4590i, V.T.C.S., with regard to an individual who died shortly after being cared for by the city's Emergency Medical Service. Included in this notice was a request for "any and all medical records in the care, custody or control of the City of Irving Emergency Medical Service and/or its recordkeeping department concerning" the individual. The request was made on behalf of the deceased's widow, and was accompanied by the widow's written consent to release the information. You would like us to determine whether, in the case that this claim may be deemed to be a request for records under the Open Records Act, section 3(a)(3) of the act would except the requested documents from disclosure. We conclude that access to these records is governed by provisions outside of the Open Records Act; therefore exceptions to the Open Records Act are not applicable to their release.

This office recently determined that emergency medical service reports created under the delegated authority of a physician are records within the confidentiality and disclosure provisions of section 5.08 of the Medical Practice Act, article 4495b, V.T.C.S. See Open Records Decision No. 578 (1990). Section 5.08(b) reads as follows:

Records of the identity, diagnosis, evaluation, or treatment
of a patient by a physician that are created or maintained by a

physician are confidential and privileged and may not be disclosed except as provided in this section.

Section 5.08 provides both for the confidentiality of such records from the general public, and for mandatory access to the records to individuals (1) falling within the exceptions to confidentiality and (2) complying with the statutory access requirements. *Id.* § 5.08(b), (h), (j), (k).

Among the exceptions from the general rule of confidentiality is one authorizing disclosure to "any person who bears a written consent of the patient or other person authorized to act on the patient's behalf for release of confidential information, as provided by Subsection (j) of this section." *Id.* § 5.08(h)(5) (emphasis added). At the same time, subsection (k) of section 5.08 provides for mandatory access, with some qualifications, for individuals falling within section 5.08(j). Subsection (j)(1) provides the following conditions for disclosure of records pursuant to subsections (b) and (k):

(j)(1) Consent for the release of confidential information must be in writing and signed by the patient . . . or a *personal representative if the patient is deceased*, provided that the written consent specifies the following:

(A) the information or medical records to be covered by the release;

(B) the reasons or purposes for the release; and

(C) the person to whom the information is to be released.

The text of section 5.08(k) reads as follows:

A physician *shall* furnish copies of medical records requested, or a summary or narrative of the records, pursuant to a written consent for release of the information as provided by Subsection (j) of this section, except if the physician determines that access to the information would be harmful to the physical, mental, or emotional health of the patient, and the physician

may delete confidential information about another person who has not consented to the release. (Emphasis added.)¹

In this case section 5.08 of the Medical Practice Act provides a distinct system of access to medical records from that laid out in the Open Records Act.²

¹This proviso is obviously not relevant in the present situation.

²We note that the legislature recently enacted section 773.091 of the Health and Safety Code, which provides the following:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

Acts 1991, 72d Leg., ch. 605, § 8, at 2203.

However, the statute also provides under newly enacted section 773.092(e):

Communications and records that are confidential under this section may be disclosed to:

....

(4) any person who bears a written consent of the patient or other persons authorized to act on the patient's behalf for the release of confidential information as provided by Section 773.093.

Id. at 2205.

Section 773.093, regarding consent, provides the following:

(a) Consent for the release of confidential information must be in writing and signed by the patient... or a personal representative if the patient is deceased. The written consent must specify:

- (1) the information or records to be covered by the release;
- (2) the reasons or purpose for the release; and
- (3) the person to whom the information is to be released.

Id.

Because the records at issue fit within both of these statutes, we must determine which statute governs access to them. This office has previously explained that statutes governing access to a specific subset of information held by a governmental body prevail over the generally applicable Open Records Act. *See* Open Records Decision Nos. 478 (1987) at 2 - 3 (Open Records Act does not govern special rights of access granted under other statutes); 451 (1986) (section 3(a)(3) inapplicable to investigative file to which subject is granted access by other statute); 43 (section 3(a)(3) inapplicable to report made public by statute).

For example, in Open Records Decision No. 451, the Texas State Board of Public Accountancy sought to invoke section 3(a)(3) of the Open Records Act to withhold information pertaining to a pending complaint against a licensee from the licensee's attorney. Section 25 of article 41a-1, V.T.C.S., provided that information held by the board pertaining to a licensee "shall be available for inspection by that ... licensee," and that the licensee could give the board written authorization to disclose the information to other people. Open Records Decision No. 451 at 2, quoting V.T.C.S. art. 41a-1, § 25 (emphasis added). Assuming the information at issue to be within both section 3(a)(3) of the Open Records Act and section 25 of article 41a-1, the decision concluded that the provision more specific to the particular information requested prevailed over the general access statute, based upon the well-established rule that specific statutes prevail over general ones. *See Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975); TEX. JUR. 3d *Statutes* §§ 126, 136.

The same analysis applies to the situation before us. Moreover, subsection (i) of section 5.08 provides that "exceptions to the confidentiality privilege in this Act are not affected by any statute enacted before the effective date of this Act." This seems a clear expression of intent that access to these records be governed by this statute, effective in 1981, rather than the Open Records Act, enacted in 1973. Because the Medical Practice Act, rather than the Open Records Act, determines your authority and duty to release these records to the requestor, section 3(a)(3) of the Open Records Act is not relevant to the access question you pose. However, as


Section 773.091 thus provides for the same confidentiality, exceptions to confidentiality, and requirements for release of the information at issue as does section 5.08 of the Medical Practice Act, without conflicting with the provisions of that act. Although release of the information to one qualified to have it is not explicitly mandated by section 773.091 *et seq.*, we believe that reading the statute in harmony with the Medical Practice Act requires such a result as to these records. Our analysis under the Medical Practice Act is therefore equally applicable to a consideration of the issue under the Health and Safety Code provisions.

long as the release form accompanying the request meets the requirements of section 5.08 of the Medical Practice Act (as well as those of Texas Health and Safety Code section 773.091), we believe that the requestor is entitled to the records under that statute.³

SUMMARY

Access to records created or maintained by a physician within article 4495b, section 5.08, V.T.C.S., is governed by the provisions of that statute, rather than by the Open Records Act. Where article 4495b gives a qualified individual a right of access to records, exceptions to the Open Records Act cannot be invoked to deny such access.

Very truly yours,



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³We assume, without information to the contrary, that the deceased's widow is his personal representative for purposes of the Medical Practice Act and the Health and Safety Code provisions.